BIS | **Department for Business Innovation & Skills**

THE SUPPLY OF GOODS: THE SHORT TERM RIGHT TO REJECT FAULTY GOODS

Impact assessment

JULY 2012

Contents

Title: **The Supply of Goods: The short term right to reject faulty goods**	Impact Assessment (IA)
	Date: 30/01/2012
IA No:	**Stage:** Consultation
	Source of intervention: Domestic
Lead department or agency: Department for Business, Innovation and Skills	**Type of measure:** Primary legislation
Other departments or agencies:	**Contact for enquiries:** Adam Gray, Consumer & Competition Policy, BIS, 3rd Floor, 1 Victoria Street, London. SW1H 0ET. T: 0207 215 1940; adam.gray@bis.gsi.gov.uk

Summary: Intervention and Options	**RPC Opinion:** AMBER

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
£m	£m	£m	Yes/No	In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?

Under the current law for the sale of goods, if goods are found to be faulty, the consumer has a short but undefined 'reasonable period' after acquiring them to reject the goods and obtain a full refund. After this period has elapsed the consumer must pursue repairs or replacements first, before refunds can be sought. Leaving the 'reasonable period' undefined gives some flexibility to take account of circumstances but also results in uncertainty over which rights apply for both consumers and retailers, leading to unnecessary, costly disputes and inconsistent protection for consumers, with some businesses offering more than consumers could expect if the case came to court, and the net effect being a burden on business.

What are the policy objectives and the intended effects?

The policy objective is to reduce confusion about the length of time available for a consumer to reject a faulty good and obtain a full refund, and simplify the law in a way which balances the expectations of businesses and consumers about what a 'reasonable period' should be and thereby removes a source of disputes between them.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: No change to the current legislation - no summary sheet has been completed for this option as there are no net costs or benefits to maintaining the status quo.

Option 1: Establish a normal period for the right to reject goods as 30 days with two exceptions where:

(a) the goods are perishable and would not be expected to last 30 days or

(b) it is understood by both parties that a delay before use of the goods may be reasonably expected.
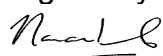
We propose that the 30 day period should be suspended for the duration of any repair work or delivery of a replacement and that on return of the item, the consumer will have the remainder of the 30 days, or 7 days (whichever is longer) to inspect the goods. We will consult on whether it would be beneficial or burdensome to make any explicit statutory provision about how (b) should be evidenced.

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year					
Does implementation go beyond minimum EU requirements?			Yes		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO$_2$ equivalent change in greenhouse gas emissions? (Million tonnes CO$_2$ equivalent)			**Traded:**	**Non-traded:**	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Date: 12/07/2012

Summary: Analysis & Evidence

Policy Option 1

Description: Establish a normal period for the right to reject as 30 days, with exceptions for (a) perishable goods or (b) goods where their use will clearly be delayed

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:**

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	**Optional**
High	Optional	Optional	**Optional**
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

None of the identified costs have been monetised

Other key non-monetised costs by 'main affected groups'

Costs for consumers in cases where a period longer than 30 days is currently available (though, only if businesses choose to reduce the protection they offer to the minimum legal standard); costs for businesses that currently offer fewer than 30 days (in the form of more refunds payable), though the business might well be required to offer 30 days or more anyway if such cases came to court under the current law. Some shop-staff familiarisation costs

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	**Optional**
High	Optional	Optional	**Optional**
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

None of the identified benefits have been monetised

Other key non-monetised benefits by 'main affected groups'

Fewer disputes and quicker resolutions will result in lower costs for consumers and retailers when dealing with problems, and less litigation will produce savings in the courts. A better functioning consumer regime overall, with more confident consumers, will make competition more effective, with its associated benefits. Businesses that currently offer more than 30 days, and then choose to adhere to the legal minimum, will incur savings and there will also be lower on-going training costs for retailers as a result of simpler law.

Key assumptions/sensitivities/risks   **Discount rate (%)**

In theory, a fixed period for rejection that applies equally to all products might be too short for certain sectors or products, resulting in ineffective protection, while being excessively long in others cases, resulting in an excessive burden on businesses. However, this risk is mitigated by the proposed exceptions.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	**Benefits:**	**Net:**	Yes/No	IN/OUT/Zero net cost

Evidence Base (for summary sheets)

Background Documents

1. This document forms part of a suite of IAs relating to the supply of goods. An overarching summary of all of these related IAs at a high level is provided at **ANNEX A**.

2. More widely, The proposals set out in this Impact Assessment form a part of a proposed wider reform of consumer law, intended to simplify and clarify consumer law to reduce business compliance costs and empower consumers. The proposals in this Impact Assessment would require primary legislation to be implemented, which we propose to do via a Consumer Bill of Rights.

3. Following changes to the law it would be our intention that a communications campaign will be initiated in order to inform consumers and those who deal with consumers and also businesses of the changes to the law. The Consumer Landscape Review is being implemented and one of its objectives is to streamline the provision of advice on consumer issues through Citizens Advice. Therefore we are already talking to Citizens Advice about their role in communicating the changes that the consumer law reform programme will bring about. We will discuss awareness raising for businesses with a range of business representative bodies

4. There is further information about the Consumer Law Reform programme in **ANNEX B**.

Introduction

5. On the recommendation of the of the Davidson Review (2005), and in order to inform the UK's negotiating position on the then draft Consumer Rights Directive, in 2009 the Law Commission and the Scottish Law Commission undertook a consultation on Consumer Remedies for Faulty Goods.

6. A key finding of that consultation was that the current law on the rejection of faulty goods is confusing and is a frequent source of dispute between consumers and retailers. The Law Commissions' recommendation was that, for the sake of clarity, a normal period of 30 days should be established for the rejection of faulty goods. This proposal is one of several that the Government intends to take forward as part of the Consumer Bill of Rights.

Problem under consideration

7. Under the current law for the sale of goods, if a good is found to be faulty, the consumer has a number of remedies available depending on when the fault becomes apparent[1]. If the fault manifests shortly after buying the goods, the consumer may be able to reject the goods and obtain a full refund. However, the time period within which this option is available is only described within the law as the "reasonable" period for the inspection of the goods. This lack of clarity is a source of confusion for consumers and retailers, which therefore weakens consumer confidence and causes unnecessary, costly disputes.

8. The alternative to the right to reject is that the consumer is entitled to repair or replacement of the item. Repair or replacement will usually be preferable for the retailer, especially repair of expensive items like cars. But the right to reject is treasured by consumers for those cases where they lose confidence in the product or the trader. The limitation of the right to reject to a 'reasonable period for the inspection of the goods' is an attempt to balance the interests of the trader and the consumer in this area.

9. However, the Law Commissions' 2009 consultation paper on 'Consumer Remedies for Faulty Goods' concluded that '*it is not possible to say with a sufficient degree of certainty how long the reasonable period for examination is because it depends upon the facts of the case. In a standard case, a consumer*

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[1] The term 'faulty goods' is used as a short-hand for goods which do not conform to the contract of sale, due to there being a breach of an express contractual term or a breach of a term implied by section 13, 14 or 15 of the Sale of Goods Act 1979. According to the Law Commissions, 'Consumer Remedies for Faulty Goods' (2009) p.vii, the most common examples of non-conforming goods are goods which are not of satisfactory quality (i.e. are faulty). However, the term also includes goods which do not correspond with their description or with a sample, and goods which are not fit for a particular known purpose. Breaches of the implied term that the seller has the right to sell the goods are currently treated differently under the common law, as the expiry of the right to reject due to acceptance does not apply and consumers may in principle recover the full purchase price, and no change is proposed.

may have sought a number of repairs, and these may have been unsuccessful. The interplay between the repairs and the period for rejection is difficult, and it means that a buyer attempting to exercise the right to reject will face difficult judgments.'[2]

10. Consumer Direct (a government-funded telephone and online service offering information and advice on consumer issues) has reported that consumers often face difficulties when seeking to reject faulty goods beyond a two week period due to ambiguity as to what constitutes a reasonable period, though legally the period for rejection is probably longer. At present, consumer advisers are often concerned about advising consumers that they can reject goods more than two weeks after purchase. [3] If consumer advisers were able to tell people that the standard period was 30 days, it would give consumers greater confidence and reduce the need to rely on ambiguous case law.

11. Moreover, business organisations including the British Retail Consortium report confusion for business on what constitutes a "reasonable" time for examination and acceptance of the good. They claim that this results in many retailers erring on the side of caution and allowing a much longer period than would be necessary, up to 2 or 3 months in some cases, thereby increasing any potential costs caused by the depreciation in value of the good. There is a feeling among retailers (relayed to BIS by retail trade bodies) that the courts tend to be pro-consumer and favour a longer period when judging what is "reasonable". Whether or not this is the case, many retailers offer significantly longer periods, taking a reasoned view as to what the court may rule

12. The general lack of awareness of the right to reject among consumers is further evidenced by the following examples:

• FDS research for the Law Commissions found that *'Currently, virtually no-one is aware customers have a right to refund only a 'reasonable' time after purchase. Some guess around 30 days but others think the 'right to reject' could last a whole year.'*[4]

• A TNS consumer law survey found that 75% of consumers believed there would be a time limit on returning faulty goods; 10% did not believe there would be a time limit; 10% believe it would depend on the seller and 4% did not know.[5]

• The Law Commissions said that '*consumers may accept what retailers tell them their policy is, even if it is less generous than the law: 16% of consumers did not know they were entitled to a legal remedy if goods were faulty.'*[6]

13. In terms of scale of the problem, the 2008 Consumer Detriment Survey conducted by the OFT[7] (which represents the latest available data on consumer detriment) found that there were around 5.4 million problems just related to 'defective goods' and 'goods that were faulty or damaged, lacked durability, wore out very quickly'. This is likely to represent a minimum figure, as defective goods would also have caused problems recorded under other problem categories, such as 'problems with product or service safety', and yet for these two categories alone the associated detriment was around £480m. There were also around 1.2m problems, relating to around £104m worth of consumer detriment, recorded under the problem categories of 'failure to observe cancellation rights' and 'difficulties sorting out any problems you may have had with a retailer or supplier, or problems getting refunds' which further suggests that clarity about exactly what these cancellation and refund rights actually are, in terms of timing, would be beneficial.

Rationale for intervention

14. Evidence in the section above supports the conclusion that the period during which consumers can reject goods and obtain a full refund, currently defined as a 'reasonable' period for the inspection of the goods, is causing uncertainty about how consumer law operates in practice. This lack of definition is a source of confusion for consumers and retailers, leading to unnecessary disputes and costly litigation.

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[2] Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper' (2008), p.42

[3] Law Commissions, 'Consumer Remedies for Faulty Goods' (2009), p.32

[4] FDS, 'Appendix A: Qualitative Research into Consumers' Perceptions of Consumer Remedies for Faulty Goods', in The Law Commissions, *Consumer Remedies for Faulty Goods, A Joint Consultation Paper*, (2008), p.148

[5] TNS, 'Consumer Law Omnibus Survey' (June, 2008), Table 70, p.269

[6] Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper' (2008), p.53

[7] OFT, 'Consumer Detriment Survey', (2008) – data broken down by problem type category

15. This conclusion has been supported by the Davidson Review (2005), and was recommend by the Law Commission, following a consultation exercise in 2009. The Davidson Review found that the law on consumer remedies was too complex, causing unnecessary burdens on business and respondents to the Law Commissions' consultation specifically reported that the main problem with the right to reject was uncertainty over how long it lasts and, in fact, 'most consultees felt strongly that the right to reject … would benefit from clarification as to how long it lasts.'[8]

Policy objective

16. The policy objective is to reduce confusion about the length of time available for a consumer to reject a faulty good and obtain a full refund, thereby simplifying the law and removing a source of disputes between consumers and retailers.

Description of options considered

17. We have considered the following options:

18. **Option 0**: *No change to the current legislation* - no summary sheet has been completed for this option as there are no net costs or benefits to maintaining the status quo

19. This option would leave the law as it is, with consumers entitled to exercise the right to reject within a 'reasonable time' following a sale of goods. As stated above, the length of the reasonable time is not clear and so the current complexities and uncertainties would remain.

20. A major problem with the 'do nothing' option is that it would leave an administrative burden on retailers, including unnecessary disputes and legal costs.

21. Consumer groups also find it difficult to give clear advice and typically spend longer giving advice on faulty goods because of the ambiguity of the law.

22. As an alternative to changing the legislation, we have also considered simply producing guidance making 30 days a recommended minimum time period within which businesses should offer full refunds for faulty goods. However, this has not been recommended because we believe that the enforced compliance brought about by legal change would be essential to gaining the maximum benefit from this proposal.

23. This legislation as a whole, including this clarification of the right to reject, is designed to boost consumer confidence and therefore competition, ultimately with a view to driving economic growth. In this case, if the 30 day minimum was just suggested as voluntary guidance, there would be no guarantee of receiving the same consumer rights in all shops, and so consumers would lose the confidence to shop at the full range of available retailers, and would be much more likely to stick with retailers they already know and trust, to the obvious detriment of new market entrants who could help to boost competition. Furthermore, these consumer rights need to be applied evenly across the retail sector in order to level the playing field at the bottom, so that unscrupulous rivals cannot undercut those retailers offering good consumer protection, whilst those going beyond the legal minimum can earn clear recognition for having done so. For these reasons we do not believe that the desired outcomes on the ground can be achieved without a change to the legislation.

24. **Option 1**: *Establish a normal period for the right to reject goods as 30 days with two exceptions:*
    (a) where the goods are perishable and would not be expected to last 30 days
    (b) where it is understood by both parties that a delay before use of the goods may be reasonably expected. The 30 day period should be suspended for the duration of any repair work or the delivery of a replacement.

25. This is the preferred option proposed by the Law Commission and the Scottish Law Commission in their 2009 report on consumer remedies for faulty goods. This would retain the right to reject following a sale

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[8] Law Commissions, 'Consumer Remedies for Faulty Goods: A Summary of Responses to Consultation' (May, 2009), p.14

of goods as a short-term remedy, but legislation would clarify how long it should last, together with related simplifications.

26. In addition to the Law Commission's recommendations we are also proposing that consumers should have a minimum of 7 days to inspect the goods after a repair has been carried out (or the remainder of the suspended 30 day period, whichever is longer). We are proposing this addition because we are keen that consumers should feel that repair is a valid option even within the first 30 days, rather than simply choosing rejection which would have a detrimental effect on retailers (being more costly due to the full refund and costs of disposing of the good) and on the environment. We believe that if a fault develops towards the end of the 30 day period, consumers should still have an opportunity to inspect the repair work that has been carried out and retain the option to reject if the item remains faulty. Without this addition, if a fault appeared on day 29 and was repaired, the consumer would only have a single day to inspect the good before their option to reject expired. This may encourage rejection, rather than repair, which may result in significant extra costs for business.

27. The 30 day recommendation is the only option listed here because the Law Commissions have already consulted extensively on this time period, and have produced, in the view of Government, convincing evidence that it would bring the most substantial benefits compared to any other time limit which we could implement. The case for a 30 day period, as opposed to any other length of time which could have been suggested is as follows:.

28. The Law Commissions concluded that 'in most cases 30 days would give the consumer a reasonable opportunity to inspect the goods and to test them for a short period in actual use'[9] whilst at the same time providing a level of clarity and certainty which would benefit businesses and consumers alike. These assumptions were strongly supported by consultation responses, with the majority of respondents agreeing in principle with the proposal for a 30-day normal period[10], and have since been reinforced further by BIS's own discussions with stakeholders.

29. For example, in response to the Consultation Paper, the Office of Fair Trading wrote in support of the proposal:

'*We agree that the idea of a finite time in which the right to reject is available would be a sensible reform, provided that the period is long enough. Although we appreciate that [any] specification is likely to reduce the period of time in which the right may currently be exercised in some circumstances, the advantages of simplicity outweigh the potential disadvantages in our opinion. Further we believe that many possible disadvantages could be avoided by a good consumer/trader awareness programme. If both consumers and traders knew there was a specific period in which this right could be exercised we think it may give consumers added confidence in their dealings with traders and vice versa.*

Many traders and consumers already appear to believe that consumers have 30 days in which to return goods (probably as a result of voluntary systems offered by some traders) so we think that this period is probably appropriate and gives the consumer sufficient time to test the goods and enables the trader to have some certainty'[11]

30. Similarly, the Judges of the Court of Session took the view that the 30-day normal period

'*appears to reflect the desires and expectations of both consumers and suppliers. As such, whilst there are no doubt arguments to be made for other periods 30 days appears a sensible compromise. We would wish to reiterate that in our view the principal advantage of any stipulated period is that it brings certainty. We regard that factor as a highly persuasive argument for having a stipulated period.*

In our view the period is long enough to be likely to satisfy consumer expectation in this area. Equally it is sufficiently short to avoid major inconvenience and consequent unfairness to suppliers. A stated period enshrined in statute would also provide the benefit of certainty, a period known to both consumers and suppliers.'[12]

31. Some respondents did disagree with the proposal. In particular, some respondents such as Consumer Focus argued that a longer period would be needed to test complex goods. However, given the weight of

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[9] Law Commissions, 'Consumer Remedies for Faulty Goods' (Nov, 2009), p.31

[10] Law Commissions, 'Consumer Remedies for Faulty Goods' (Nov, 2009), p.32

[11] Law Commissions, 'Consumer Remedies for Faulty Goods' (2008), p.32

[12] Law Commissions, 'Consumer Remedies for Faulty Goods: A Summary of Responses' (2009), p.15

opinion in favour of this time period the Law Commissions still concluded that it was the best option, pointing out that it would just 'encourage consumers to test goods promptly after purchase'.[13]

32. Secondly, it was also thought that 30 days would match consumer expectations. FDS research carried out for the Law Commissions found that around two thirds of people already thought that the right to a refund lasted 30 days[14] and when consumers were asked how long they thought it should last, the most common answer was that it should last for around a month.[15] Consumers very rarely take cases to court or use expert legal advice, and therefore it was considered essential that the law could be easily understood and applied in order to be effective on the ground. Therefore, although we have thought about other options such as a 60 or 90 day period, they do not seem like options worth exploring any further because the weight of evidence, based on the Law Commissions' findings, is overwhelmingly that 30 days would be the most effective possible policy in terms of bringing about the intended benefits of enhanced consumer confidence, and, ultimately, a more competitive retail sector.

33. However, the Consultation will invite respondents again to comment on whether they think 30 days is the appropriate length of time for the short-term right to reject, and to supply evidence on what impact it might have. The Government's final view will thus be informed by the Consultation as well as by the evidence it has accumulated so far.

34. The Law Commissions also recommended that there should be an exemption for goods expected to perish within 30 days and that in these instances, the right to reject should be exercised in less than 30 days. In these cases, a 30-day normal period would be incompatible with the nature of the goods.

35. Furthermore, they recommended that where it is reasonably foreseeable by, or reasonably within the contemplation of, both parties that a longer period will be needed to inspect the goods and to try them out in practice, then a consumer should have a right to argue for a period longer than 30 days. Examples of this are items bought for a nursery prior to the birth of a baby, or items of ski equipment bought in an end of season sale. We will consult on whether it would be beneficial or burdensome to make any explicit statutory provision about how this exemption should be evidenced.

36. BIS believes that these exceptions are sensible and also agree with the Law Commissions that any further exemptions would only add undue complexity rather than the simplification that this policy is aiming to achieve.

Monetised and non-monetised costs and benefits of each option

Option 0: No change

37. There are no benefits or costs associated with this option as the status quo is maintained.

Option 1: Establish a normal period for the right to reject goods as 30 days

Transfer between business and consumers

38. If goods are faulty there will inevitably be costs because of the fact they are faulty – usually consumers will not continue to use faulty goods. If the faulty goods are not repaired, it is likely they will be disposed of, either by the consumer or by the retailer. Both repair and disposal will involve costs, whether or not the consumer is given a refund. In some cases, the cost will be borne by the consumer, in other cases it will be borne by the retailer and/or manufacturer.

39. The value of some goods drops sharply as soon as they are delivered. In these cases, if the retailer refunds the purchase price or replaces goods, they not only lose the profit from the sale but may also be left with goods worth less than their wholesale value. At worst, the retailer may have to bear the cost of disposing of a worthless product. New cars are particularly prone to losing value on sale. The Retail Motor Industry Federation told the Law Commissions that new cars generally lose 20% to 30% of their

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[13] Law Commissions, 'Consumer Remedies for Faulty Goods' (2008), p.32

[14] FDS, 'Appendix A: Qualitative Research into Consumers' Perceptions of Consumer Remedies for Faulty Goods', in The Law Commissions, *Consumer Remedies for Faulty Goods, A Joint Consultation Paper*, (2008), p.137

[15] Law Commissions, 'Consumer Remedies for Faulty Goods' (Nov, 2009), p.31

value as soon as they are driven off the forecourt.[16] Reputable motor retailers carry out careful checks on new cars before they sell them to prevent problems occurring on delivery. They also provide quick and efficient repairs, to encourage consumers with a right to reject to agree to a repair instead.

40. The above suggests that an element of the short-term right to reject is that it sets out a transfer (that is deemed to be fair) from business to consumers, and therefore it does not provide an economic benefit. However by limiting the time period to 30 days, we expect the overall size of this transfer to be reduced, though we believe that the resulting balance will still be fair to consumers. In addition to this transfer, there are net economic benefits to be gained from a well functioning, cost effective consumer regime.

Benefits

Fewer costly disputes and less litigation for both consumers and business:

41. Respondents to the Law Commissions' consultation specifically reported that the main problem with the right to reject was uncertainty over how long it lasts and 'most consultees felt strongly that the right to reject … would benefit from clarification as to how long it lasts.'[17]

42. These claims have also been made to BIS in recent discussions with business groups. Therefore, although we lack robust financial data at this stage on the cost of these disputes, or on the incidence of litigation, we expect that establishing a fixed length of time of 30 days for this right to be exercised would reduce these costs.

43. The latest available data suggests that there were around 825,000 cases of difficulty sorting out problems with a retailer or supplier, or getting refunds in 2008, causing around £83m worth of consumer detriment, which we would also expect greater clarity and certainty to reduce.[18]

44. Clarity over the length of the short-term right to reject may allow a significant proportion of these cases to be resolved more easily. For illustrative purposes only, if 200,000 cases were resolved immediately, where businesses had previously spent one hour of employee time on each case (split between shop assistant and head office at an average hourly rate of £10 per hour) the saving to business would be £2m per annum. Given the enthusiasm of retailers for this proposal, this is likely to be a significant under-estimate.

Lower ongoing training costs:

45. In 2009, the most recent year for which figures are available, there were 3.155 million retail sector employees (excluding the motor retail sector).[19] For illustrative purposes only, if we were to estimate that 1 million of these would need 30 minutes less training each year, and that they were paid the current minimum wage of £6.08, this would save business around £3 million per year.[20]

A more consistent approach to similar problems:

46. Consumer Direct (a government-funded telephone and online service offering information and advice on consumer issues) has reported that consumers often face difficulties when seeking to reject faulty goods beyond a two week period due to ambiguity as to what constitutes a reasonable period when legally the period for rejection is probably longer. At present, consumer advisers are often concerned about advising consumers that they can reject goods after more than two weeks. If consumer advisers were able to tell people that the standard period was 30 days, it would give consumers greater confidence and reduce the need to rely on ambiguous case law.

47. Confusion for business on what constitutes a 'reasonable' time for examination and acceptance of the good results in many erring on the side of caution and allowing a much longer period than would be

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[16] Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper (2008), p.125

[17] Law Commissions, 'Consumer Remedies for Faulty Goods: A Summary of Responses to Consultation' (May, 2009), p.14

[18] OFT, 'Consumer Detriment Survey' (2008) – Problem Type Category: 'Difficulty sorting out any problems you may have had with a retailer or supplier, or problems getting refunds'

[19] Office for National Statistics, 'Annual Business Survey, Division 47 – Retail Trade, except of Motor Vehicles and Motorcycles', Release Date: 17/11/2011 – figure for 'total employment – average during the year' (the figure for 2010 is not available)

[20] This is based on the illustrative calculation of benefits used by the Law Commissions, in their 'Impact Assessment of Consumer Remedies for Faulty Goods' (Nov, 2009), p.4

necessary, thereby increasing any potential costs caused by the depreciation in value of the good. There is a feeling among retailers (relayed to BIS by retail trade bodies) that the courts tend to be pro-consumer and favour a longer period when judging what is "reasonable". Whether or not this is the case, many retailers offer significantly longer periods, taking a reasoned view as to what the court may rule.

48. Establishing a fixed duration for right to reject faulty goods, with the two exceptions stated above, would reduce the costs incurred by business as a result of dealing with rejected goods that have depreciated in value beyond the proposed 30 day limit, but it is not possible to put a figure on this saving as there is no data on the extent to which retailers currently offer the right to reject after 30 days and some might continue to go beyond the legal minimum even after the law is clarified.

More confident consumers, with resulting improvements to the competition regime:

49. While most businesses view increased consumer protection as a cost, there is evidence that effective dispute resolution can increase sales. When the OFT asked consumers to what extent problems had a negative impact on their likelihood to use the company again, the proportion who said it affected their future behaviour 'a great deal' was 52% of unresolved cases, compared to 36% of completely resolved cases.[21]

50. FDS research also indicates that the right to reject, in particular, gives consumers the confidence to purchase brands and goods which are unfamiliar to them and from retailers whose policies they do not know, with 37% of respondents saying the right to a refund made them more confident about buying an unfamiliar brand.[22] If true, this is likely to contribute to dynamic markets allowing new entry and sustaining competition and innovation which carries substantial economic benefits.

Costs

51. Businesses that currently interpret the reasonable time for inspection as being less than 30 days, and are not challenged on this, will incur a direct cost in the form of more refunds that must be provided. This will represent a direct transfer to consumers. On the other hand, there will be a cost to consumers where the 30 days represents a reduction on what is currently available.

52. It is not possible to make an accurate estimation of current business practices as the undefined nature of the law means that there is a wide variety of practices, depending on the retailer, the type, and the value of the good in question. The Law Commission advise that 30 days is a rough approximation of where the law currently stands, so these costs and benefits may even themselves out.

53. There would also be a one-off familiarisation cost, incurred through any necessary staff training. For illustrative purposes only, we have estimated that this cost could be around £2 million, based on an estimate that 2 million of the 3.155 retail sector employees would need the training and that it would take 10 minutes at an hourly rate of £6.08.[23]

Rationale and evidence that justify the level of analysis used in the IA

54. We believe a quantification of the benefits resulting from a clarification and standardisation of the law aimed at increasing certainty and subsequently leading to a more cost-effective consumer regime in the medium term, which might filter in the longer term into a more vigorous competitive environment in the UK economy would be extremely time and resource consuming, and disproportionate given the scale of the proposed changes.

55. The Government has therefore focused on describing the costs and benefits at this stage, and the main affected groups whilst inviting respondents to the Consultation to comment on the benefits they see arising out of these changes, in order to better inform the final Impact Assessment.

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[21] OFT, 'Consumer Detriment' (April, 2008), p.74

[22] Law Commissions, 'Consumer Remedies for Faulty Goods' (2009), p.25

[23] This is based on the illustrative calculation of costs used by the Law Commissions, in their 'Impact Assessment of Consumer Remedies for Faulty Goods' (Nov, 2009), p.4

Risks and assumptions

56. In theory setting a fixed period for rejection that applies equally to all products might be too short for certain sectors or products, resulting in ineffective protection, while being excessively long in other cases, resulting in an excessive burden on businesses. However, this risk is mitigated by the proposed exceptions.

57. The Government is assuming, based on advice from the Law Commissions and discussions with business groups, that the cost to some retailers of increasing the period of the right to reject to 30 days is matched by the benefit to others of reducing the period. The fact that business groups strongly support this proposal offers some reassurance that this assumption may be safe, but it will be tested in the consultation.

Direct costs and benefits to business calculations

58. We expect this reform to decrease the burden on business because our understanding from informal consultations is that returns within 30 days are generally accepted anyway, and so it will be a net saving to avoid refunds after that point. We also see significant value in the clarification itself.

59. However, these benefits have not been quantified at this stage. In an ideal world with infinite resources, in order to quantify and monetise all the relevant costs and benefits, data would be needed on:

(a) The total value of the refunds which are currently given more than 30 days after the sale. If businesses chose to change their policies to match the legal minimum, this would become a saving. To calculate this saving accurately, the proportion of businesses choosing to move to the legal minimum would therefore also need to be known.

(b) The estimated cost of the repairs or replacements which would have to be offered instead of refunds, after 30 days.

(c) The total value of those goods which are currently refused a refund within the first 30 days, specifically on the grounds that they have been returned too late, and which would now have to be refunded.

60. Data on the cost of hypothetical repairs - (b) - or the value of refunds that did not take place - (c) - is almost certainly not collected, and it would be disproportionate to try to collect it.

(d) The value of simplification and clarification would also have to be taken into account. This would include the costs of time spent on disputes, legal advice sought, court time and staff training.

61. The OIOO figure could then be calculated as (costs) – (benefits):

$$(b + c) – (a + d) = OIOO \text{ figure}$$

Wider impacts

Competition assessment

62. We believe that a basic floor of consumer rights makes consumers more prepared to buy unfamiliar or unadvertised products from unknown retailers. A base level of remedies provides a risk/reward ratio that allows new providers to enter the market at a competitive price.

63. On the other hand, if the law were to impose excessive consumer rights, this would increase prices. It would prevent consumers from exercising choices about the balance between price and quality which most met their needs. Consumers might be forced to buy a better quality of good than they wished at an excessive price.

64. It would appear that competition is best served by a balanced approach. The law should provide a floor of familiar and valued rights. We think that a clarified right to reject would give consumers confidence that the goods they buy will live up to what has been promised and meet their legitimate expectations.

They will then know that if the goods are not as promised, they can get their money back. However, additional rights (such as an extended right to reject) would be best left to the market.

Impact on small firms

65. Small firms are an important part of the retail sector. In 2011 there were around 478,000 businesses with fewer than 50 employees in the 'Wholesale and Retail Trade' (including repair of Motor Vehicles and Motorcycles), and they accounted for 36.5% of total turnover in this sector.[24]

66. Ethnic minority businesses are concentrated within this sector.[25] Small shops are particularly likely to be Asian-owned. Some studies suggest that as many as three-quarters of all independently-owned single retail outlets in London are Asian.[26]

67. Small firms are especially sensitive to the effects we have outlined above. First, they may find it difficult to cope with the present complexity in the law, lacking the in-house legal resources of large retailers. Studies show, for example, that they are often over-represented as defendants in small claims proceedings, and find the litigation process particularly stressful[27].

68. Secondly, small firms are most affected by low consumer confidence. Without the right to reject, consumers tend to buy from large firms with well-known reputations. Clarification of the law should therefore disproportionately benefit smaller firms.

69. On the other hand, small firms might be disproportionately affected by an extension of consumer rights. This is because they would find it more difficult to pass the costs of faulty goods to the manufacturer.

70. We have considered whether or not small businesses should be exempt from the new legislation but believe that this would mean that, not only would the current complexities continue to cause confusion among the retailers themselves, but that consumers may gravitate towards larger retailers where their rights are clearer and better understood. This would be to the obvious detriment of small retailers.

71. Our conclusion is that the greatest benefit to small firms lies in our preferred option, which is to retain the right to reject but to clarify it.

Summary and preferred option with description of implementation plan

72. Establish a normal period for the right to reject goods as 30 days with two exceptions.

(a) where the goods are perishable and would not be expected to last 30 days and

(b) where it is understood by both parties that a delay before use of the goods may be reasonably expected. (We will consult on whether it would be beneficial or burdensome to make any explicit statutory provision about how (b) should be evidenced.)

73. We propose that the 30 day period should be suspended for the duration of any repair work or delivery of a replacement and that on return of the item, the consumer will have the remainder of the 30 days, or 7 days (whichever is longer) to inspect the goods.

74. The government's intention is to implement these proposals through the planned Consumer Bill of Rights with a tentative implementation date of 2014 (subject to the findings of consultations and the Parliamentary timetable). A post implementation review will be carried out within 3-5 years of Royal Assent, as per the requirements for post legislative scrutiny.

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[24] BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

[25] Of ethnic minority-led businesses with employees in the UK, 87% are in the service sector, compared with only 72% of non ethnic minority-led businesses. See www.berr.gov.uk/files/file38247.pdf

[26] For further discussion, see 'The contribution of Asian-owned businesses to London's economy', GLA Economics (June 2005), p.13 [http://www.london.gov.uk/mayor/economic_unit/docs/asian_businesses.pdf] – Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

[27] J Baldwin, Small Claims in the County Courts in England and Wales (1997) pp 26 and 100

Supply of Goods Impact Assessments: Overarching Explanation

Problem under consideration

1. At present many businesses and consumers are unaware, or unclear, about their rights and obligations, leading to disputes that are costly for business and consumers, and preventing consumers from effectively pursuing their rights.

2. Responses to the Consumer Law Review which took place in 2008 suggested there would be strong benefits for business, consumers and enforcers from a coherent consolidated law, clearly expressed, which as far as possible minimised the differences between different types of contract and manners of purchase, including digital downloads.[28]

3. Our proposals are based on research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law'[29] as well as the above-mentioned Consumer Law Review and the Law Commission and Scottish Law Commission's 2009 report on 'Consumer Remedies for Faulty Goods'[30].
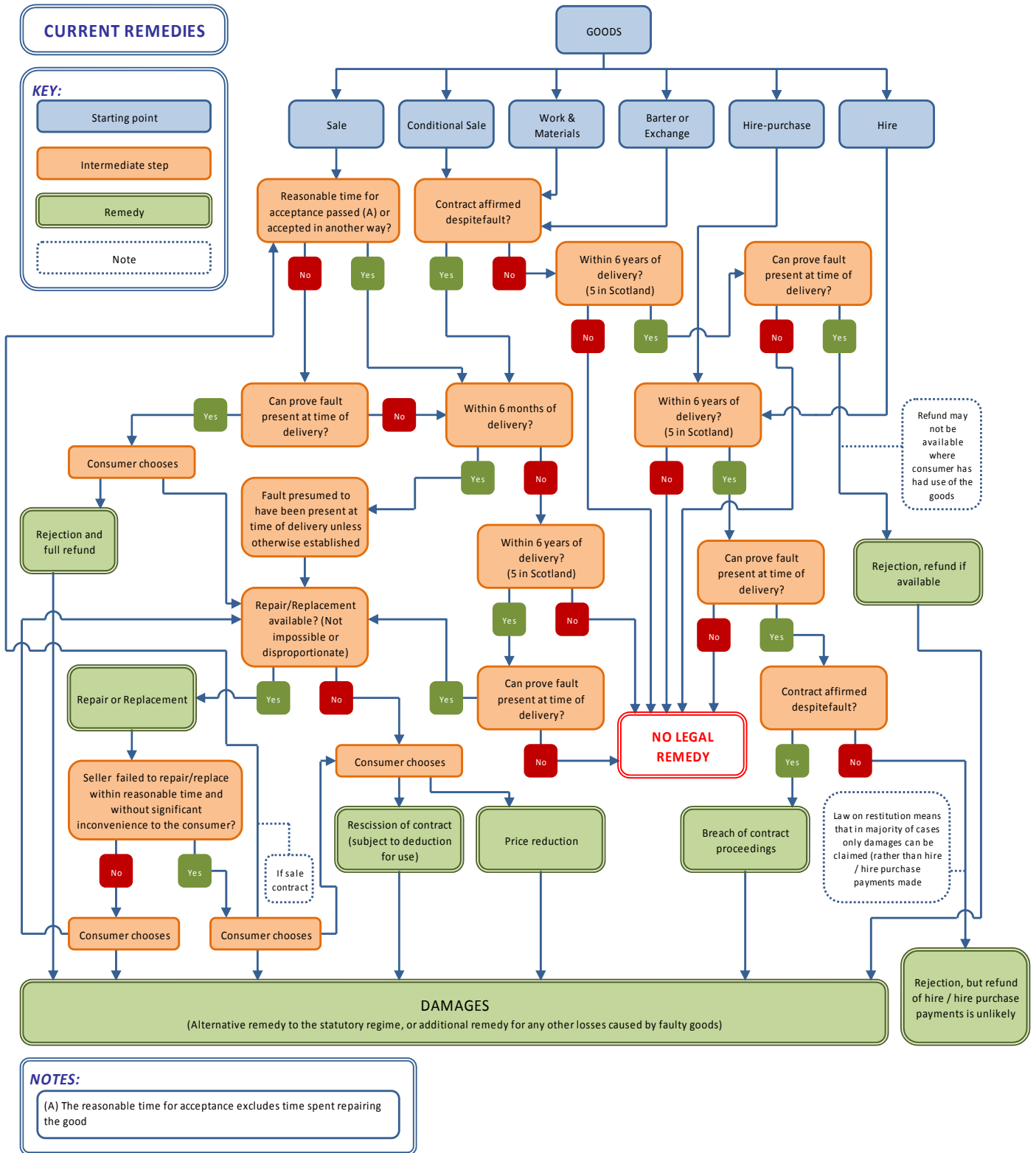
Rationale for intervention

4. Responses to the Consumer Law Review (2008), the Law Commission and Scottish Law Commission's report on Consumer Remedies for Faulty Goods (2009) and research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law' (2010) all suggested there would be strong benefits for business, consumers and enforcers from a coherent consolidated law, clearly expressed, which as far as possible minimised the differences between different types of contract and manners of purchase. Such changes would make the law more accessible, increasing both business and consumer awareness of their rights and obligations.

5. Consumer sales in the UK were worth £5,774 million per week in the first quarter of 2011 (the latest data available) and there is evidence that the scale of consumer detriment in the UK is large. The latest available research conducted by the OFT estimated that the total consumer detriment related to problems with goods and services, amounted to around £6.6bn in 2008. Of this, around £481 million specifically related to problems with 'defective goods' and 'goods that were faulty, damaged or lacked durability', and the overall detriment caused by goods will be much higher given their additional involvement in other recorded sources of detriment, such as 'repair problems'. This equates to a minimum of 5.38 million problems with goods in the UK, suggesting that the scale of the problem to be addressed here is considerable.[31]

6. The Retail Red Tape Challenge concluded in July 2011 that there would be significant gains to be made by rationalising and clarifying consumer law. Reform of the law on sale of goods is a part of the Government's response.

7. To illustrate the complexity of the current law, the following flowchart shows the scheme of remedies for the supply of faulty goods.

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[28] BIS, 'A Better Deal For Consumers: Delivering Real Change Now and Help for the Future' (July, 2009), p.80

[29] Prof. Twigg-Flesner & Prof. Geraint Howells (eds.), 'Consolidation and Simplification of UK Consumer Law' (Nov, 2010)

[30] Law Commissions, 'Consumer Remedies for Faulty Goods' (2009)

[31] OFT, 'Consumer Detriment Survey', (April 2008) - data broken down by Problem Type Category & then converted to 2011 prices based on inflation

CURRENT REMEDIES

KEY:
- Starting point
- Intermediate step
- Remedy
- Note

GOODS

Sale · Conditional Sale · Work & Materials · Barter or Exchange · Hire-purchase · Hire

Reasonable time for acceptance passed (A) or accepted in another way? — No / Yes

Contract affirmed despite fault? — Yes / No

Within 6 years of delivery? (5 in Scotland) — No / Yes

Can prove fault present at time of delivery? — No / Yes

Can prove fault present at time of delivery? — Yes / No

Within 6 months of delivery? — Yes / No

Within 6 years of delivery? (5 in Scotland) — No / Yes

Refund may not be available where consumer has had use of the goods

Consumer chooses

Fault presumed to have been present at time of delivery unless otherwise established

Within 6 years of delivery? (5 in Scotland) — Yes / No

Can prove fault present at time of delivery? — No / Yes

Rejection, refund if available

Rejection and full refund

Repair/Replacement available? (Not impossible or disproportionate) — Yes / No

Can prove fault present at time of delivery? — No

NO LEGAL REMEDY

Contract affirmed despite fault? — Yes / No

Repair or Replacement

Seller failed to repair/replace within reasonable time and without significant inconvenience to the consumer? — No / Yes

Consumer chooses

Rescission of contract (subject to deduction for use)

Price reduction

Breach of contract proceedings

Law on restitution means that in majority of cases only damages can be claimed (rather than hire / hire purchase payments made

If sale contract

Consumer chooses · Consumer chooses

DAMAGES
(Alternative remedy to the statutory regime, or additional remedy for any other losses caused by faulty goods)

Rejection, but refund of hire / hire purchase payments is unlikely

NOTES:
(A) The reasonable time for acceptance excludes time spent repairing the good

8. On the basis of the expert advice received as part of the above listed reviews, and recognising both business support for this approach and the significant scale of potential consumer gain, the Government is persuaded that intervention is warranted at this time.

Policy objective

9. The policy objective is to reduce business costs by clarifying the law, and thereby also to empower consumers and undermine rogue traders. By making the law clearer and more accessible the new law should make consumers more confident to assert their rights, thereby contributing to dynamic markets, adventurous purchasing, competition and growth.

Policy Proposals

10. The government has identified 5 individual policy proposals, each with a number of options. The list below provides a summary of our preferred options, showing how each fits within three broad themes:

- Clarity and understanding of the law – this theme covers issues stemming from the complexity of the language of the current legislation and from lack of consumer awareness of the law.

- Lack of definition – this theme covers areas where the current framework does not provide clear-cut answers (either intentionally or unintentionally) to some common issues.

- Lack of consistency – this theme includes issues caused by inconsistencies within the law.

Clarity and understanding the law

11. Along with a general approach to drafting the Bill which will aim to use simple, modern language, we have a single proposal that falls within this category:

- Establishing a statutory scheme of guarantees and clearly stated remedies for breach of these guarantees. This would replace the current "implied terms" model in which quality standards are applied to the underlying contract, necessitating an understanding of contract law to fully appreciate the specifics of the consumer's rights.

Lack of definition

12. Proposals detailed below that fall within this category are:

- Establishing a period of 30 days, within which the good may be returned for a full refund if a fault is identified. At present there is an undefined period for inspection and return of a faulty good and this lack of definition has been highlighted by both business and consumer groups as a source of dispute and therefore cost.

- This would clarify the current situation where a consumer may only access the second tier remedies if a repair/replacement is impossible or disproportionate, or has not been provided within a "reasonable time" and without "significant inconvenience" to the consumer. (If such circumstances arose before the fixed number of repairs/replacement or time limit had been met, then the consumer would still be able to access second-tier remedies at that point.) At present these terms are unclear, leading to many costly disputes.

- Establish a minimum refund (as a proportion of the amount paid) that a consumer can expect to receive on exiting the contract through the second tier remedy of rescission. At present the retailer is entitled to make a deduction from the refund to account for the use that the consumer has had of the goods prior to the fault manifesting; however, no guidance is available on how this deduction should be calculated.

Lack of consistency

13. There is a single proposal that falls into this category:

- Align the remedies for all transaction types for the supply of goods. At present, different remedies apply, depending on the type of contract that has been entered into. In many cases it is not clear what type of agreement the contract forms, so it is difficult to establish what remedies are available to the consumer.

Our proposal is that the remedies currently available for sale of goods should be extended to other transaction types.

14. **N.B.** It should be noted that the current framework applies (and the new one will continue to apply) to goods of an enormous range of type and quality. At present, in the Sale of Goods Act 1979, for goods sold in the course of a business, "goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances" (s.14(2A)). This requirement will be retained, and therefore in order to access any of the consumer remedies this 'reasonable person' test will first have to be met.

15. For this reason, there has been no attempt to distinguish between the quality of different goods when stipulating the remedies to which consumers are entitled. If, for example, the good was so cheap that no reasonable person would expect it to still be working (or in the same condition) after 4 years, then clearly no consumer remedies would be available on the basis of its quality being unsatisfactory at that time. All of the remedies are only available for goods that ought to be functioning properly at the time the problem arises, but are not. The older a good becomes, the less plausible perfect functioning becomes and some parts are expected to wear out faster than others. If even an expensive car develops a faulty battery after 4 years, for example, the consumer would not expect a remedy based on the good being faulty at the time of sale. But if a quality car suffered an engine blow-out after 4 years of normal use, the consumer might have a claim as this would generally not be expected.

Overall Costs and Benefits

Benefits

16. Making consumer rights more accessible and straightforward to understand for both business and consumers should speed up the time taken to resolve disputes, reduce staff training costs and make litigation less likely. A more effective consumer regime would help provide a level playing field for law abiding business by undermining businesses which trade off the opaqueness and complexity of the law to exploit consumers. This will also increase consumer confidence, which should contribute towards increasing competition and innovation, which are key drivers of economic growth.

Costs

17. There will be transition costs for businesses and consumer advisers in understanding the new rules and updating training courses, guidance materials and internal company documents which deal with consumer law. Improved consumer awareness and confidence may result in short term costs to some businesses related to dealing with consumers pursuing their rights, who may previously have "suffered in silence". There will be some instances where consumers will have to wait longer to exit the contract as a result of our proposal to limit the short term right to reject and there may be some costs as well as benefits to business from the proposals to clarify the law by fixing a minimum value for refunds available at the rescission of contract. There may also be costs for some businesses arising out of proposals to limit the number of mandatory failed repairs to 2 (after which the consumer is entitled to rescind the contract). Some sellers of high-cost items may be able at present to insist on a longer cycle of repairs, if the repairs are relatively minor.

Rationale and evidence that justify the level of analysis used in the IAs

18. The level of analysis possible for the individual proposals varies in accordance with the availability of data and so detailed rationale for the level of analysis is covered in the relevant sections below.

19. High-level figures demonstrating the scale of the problem in general terms are readily available, but in a number of areas more detailed evidence does not exist. For example, we recognise that in a number of the proposals it would be ideal to have evidence of the number of cases where a particular remedy is utilised by consumers but we are informed that retailers do not generally keep records to that level of detail.

20. Additional evidence will be sought during and through the consultation exercise and research will be commissioned to help develop the evidence base further. Our approach to this is set out in the relevant sections.

Risks and assumptions

21. Risks and assumptions associated with the individual proposals are covered in detail in their respective sections, below. A risk that has been identified for two of the proposals is that they may lead to an increase in fraudulent behaviour among some consumers. We believe that in both of the relevant proposals, the benefits in terms of simplicity and reduction in disputes outweighs any increase in fraud that might reasonably be anticipated, but this will be tested in the consultation.

Wider impacts

Competition assessment

22. We believe that a basic floor of consumer rights makes consumers more prepared to buy unfamiliar or unadvertised products from unknown retailers. A base level of remedies provides a risk/reward ratio that allows new providers to enter the market at a competitive price.

23. On the other hand, if the law were to impose excessive consumer rights, this would increase prices. It would prevent consumers from exercising choices about the balance between price and quality which most met their needs. Consumers might be forced to buy a better quality of good than they wished at a higher price.

24. It would appear that competition is best served by a balanced approach, which we believe this proposed change achieves. A limited repair or replacement cycle would give consumers confidence that the goods they buy will live up to what has been promised and meet their legitimate expectations. However, additional rights (such as offering immediate refunds) are best left to the market.

Impact on small firms

25. Small firms are an important part of the retail sector. In 2011 there were around 478,000 businesses with fewer than 50 employees in the 'Wholesale and Retail Trade' (including repair of Motor Vehicles and Motorcycles), and they accounted for 36.5% of total turnover in this sector.[32]

26. Ethnic minority businesses are concentrated within this sector[33]. Small shops are particularly likely to be Asian-owned. Some studies suggest that as many as three-quarters of all independently-owned single retail outlets in London are Asian[34].

27. Small firms are especially sensitive to some of the problems outlined above. First, they may find it difficult to cope with the present ambiguities in the law, lacking the in-house legal resources of large retailers. Studies show, for example, that they are often over-represented as defendants in small claims proceedings, and find the litigation process particularly stressful[35].

28. Secondly, small firms are most affected by low consumer confidence. Without the right to reject, consumers tend to buy from large firms with well-known reputations. Clarification of the law should therefore disproportionately benefit smaller firms.

29. On the other hand, small firms might be disproportionately affected by an extension of consumer rights. This is because they would find it more difficult to pass the costs of faulty goods to the manufacturer.

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[32] BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

[33] Of ethnic minority-led businesses with employees in the UK, 87% are in the service sector, compared with only 72% of non ethnic minority-led businesses. See www.berr.gov.uk/files/file38247.pdf.

[34] For further discussion, see "The contribution of Asian-owned businesses to London's economy" GLA Economics (June 2005) p 13, at http://www.london.gov.uk/mayor/economic_unit/docs/asian_businesses.pdf. Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

[35] J Baldwin, *Small Claims in the County Courts in England and Wales* (1997) pp 26 and 100

30. We have considered whether or not small businesses should be exempt from the new legislation but believe that this would mean that, not only would the current complexities continue to cause confusion among the retailers themselves, but that consumers may gravitate towards larger retailers where their rights are clearer and better understood. This would be to the obvious detriment of small retailers.

Implementation Plan

31. The government's intention is to implement these proposals through the planned Consumer Bill of Rights with a tentative implementation date of mid 2014 (subject to the findings of consultations and the Parliamentary timetable). A post implementation review will be carried out within 3-5 years of Royal Assent, as per the requirements for post legislative scrutiny.

The Consumer Law Reform Programme

1. In response to the Retail Red Tape Challenge the Secretary of State for Business announced a consumer law reform programme[36] to clarify and simplify consumer rights. The consumer law reform programme aims to streamline and modernise rights found currently in 12 pieces of legislation and the investigatory powers of Trading Standards officers found scattered in around 60 pieces of legislation.

2. Consumer protection regulations have developed piecemeal over many decades, with confusing overlay of European legislation onto domestic legislation in recent years. Businesses complain that the complexity of the law imposes costs and uncertainty on them and consumer groups complain that consumers cannot understand their rights and so cannot enforce them. Even academics and lawyers complain that the law is too complex. The consumer law reform programme will overhaul this regime setting out a simpler framework in plain English that provides certainty where there is lack of clarity, removes overlaps and unnecessary rules, and updates the law where it is required.

3. The proposals for reform of consumer law will take forward the recommendations and conclusions of numerous academic research reports and public consultations over the last few years. The Davidson report in 2006 concluded that UK law on Sale of Goods was unnecessarily complex and this was reviewed by the Law Commission who made recommendations in 2009[37]. In 2005 the Law Commission recommended simplification of Unfair Contract Terms law[38]. The University of East Anglia concluded in 2008 that the UK consumer protection regime had three key weaknesses – uneven enforcement, weak redress for consumers when things go wrong and excessively complex law[39]. A review of this regime in 2008 led by the Better Regulation Executive concluded that much consumer legislation could be simplified and modernised so that consumers and those dealing with consumers are clearer about the framework surrounding their transactions[40]. This review revealed strong support across the board for consolidating the legislation, making it much clearer and more accessible. Two further pieces of academic research have more recently made recommendations relating to consumer law for digital content and how the law could be simplified for goods and services[41].

4. At the heart of the package of reform BIS will be bidding for a parliamentary slot for a Consumer Bill of Rights. The core of the Bill will overhaul core consumer rights in relation to faulty goods and poor services, and update the law to clarify rights for consumers when purchasing digital content. The Bill will also provide a generic set of Trading Standards investigatory powers in one place[42], measures to empower consumers to challenge anti-competitive practices[43], and possibly introduce civil court sanctions for breaches of consumer law and provide more effective powers for Local Authorities to regulate street trading.

5. The Bill will be accompanied by a package of secondary legislation that is intended to come into force at the same time using similar language. This will include implementation of the Consumer Rights Directive, updating and clarifying unfair contract terms legislation, and providing a clearer route for consumers to redress after misleading or aggressive practices.

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[36] www.bis.gov.uk/news/topstories/2011/Jul/retail-red-tape

[37] Davidson Report 2006 www.bis.gov.uk/files/file44583.pdf;
htttp://lawcommission.justice.gov.uk/docs/lc317_Consumer_Remedies_In_Faulty_Goods.pdf

[38] http://lawcommission.justice.gov.uk/docs/lc292_Unfair_Terms_In_Contracts.pdf

[39] Benchmarking the performance of the UK framework supporting consumer empowerment.. www.bis.gov.uk/files/file50027.pdf

[40] www.bis.gov.uk/files/file52071.pdf

[41] www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1125-consumer-rights-in-digital products;
www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1225-consolidation-simplification-uk-consumer-law

[42] The RPC has recently reviewed Impact Assessments and a consultation is ongoing (May 2012).

[43] The RPC has recently reviewed an Impact Assessment and a consultation is ongoing (May 2012).

6. We believe that the proposed Consumer Law Reform programme will reduce business compliance costs, for example by business spending less time on staff training in consumer law and reduced time and legal expense spent settling disputes with consumers. Retailers tell us they spend time dealing with consumers who are misinformed about their rights, often thinking that they have more rights than is the case, and that they tend to err on the side of caution when settling disputes where the law is unclear.

7. We also believe that the new framework of consumer law will empower consumers to assert their rights. Empowered consumers should stimulate competition and innovation since well protected, well informed consumers are likely to be more open to new market entrants and innovative products. The proposed reforms will therefore contribute to growth as companies seek commercial success through innovation and targeting consumer needs, rather than by misleading them and/or fobbing them off with poor quality goods and services. A clear consumer protection framework helps create a level playing field; those businesses which fail to comply with the law can be tackled through enforcement (private and public), ensuring that honest businesses are competing on a level footing against each other and not against rogues.

8. Whilst we have a fairly robust body of evidence about failings in the existing law and about consumer experiences, behaviour and understanding of consumer law, we need to gather more evidence about business behaviour in order to make a more informed assessment of the impact of the consumer law reform programme as a whole. Government believes that the case for change is very strong, but that the impact of specific change options needs more work.

9. Alongside the formal consultation process, we are therefore planning to gather additional input from different sized retailers and service providers in several sectors in order to estimate better the current baseline and from there make meaningful estimates of likely impact of our proposals. From early discussions with business groups it will probably not be possible to collect all the evidence we would like in enough granularity, for example retailers tell us that they do not always record under which law or whether as a goodwill gesture they offer consumers a refund so they would find it difficult to relate their data back to the Sale of Goods Act. However we are planning a pragmatic approach consisting of sampling, surveys and focus groups to gather, in particular, evidence of costs of implementing any change in consumer law (such as training and communication costs), current practice in resolving disputes, and estimates of the cost of legal advice.

10. We will also explore consumer understanding of the terminology used in consumer law and in the proposed new framework, so that we can adopt a plain English approach where possible.

11. The impact of the changes in the law will rely on consumers and those who deal with consumers knowing about and understanding the new framework of consumer law, and also on its effective enforcement. The Consumer Landscape Review is being implemented and one of its objectives is to streamline the provision of advice on consumer issues through Citizens Advice and the enforcement of consumer law through Trading Standards. Therefore we are already talking to Citizens Advice about their role in communicating the changes that the consumer law reform programme will bring about. We are also engaging with Trading Standards and other enforcers to ensure that they are aware of the proposed changes and actively engaging in the policy development process. We will discuss awareness raising for businesses with a range of business representative bodies.